Remarks

Restriction Requirement Under 35 U.S.C. §121

In the August 19, 2009 Office Action the Examiner required election of one of the two following allegedly patentable distinct inventions:

I. Claims 35-43, 52-53, 56-57, 60, 63-64, 68-70, 73, 79-81, 84-95, 97-98, 100-102, and 108-109 drawn to a device for treating nerve tissue, classified in class 607, subclass 116.

II. Claims 111-113, and 116-117, drawn to a method of treating nerve tissue, classified in class 607, subclass 45.

The Examiner stated that inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. The Examiner stated that in the instant case, the method does not require a plurality of electrodes or an implantable controller.

The Examiner therefore concluded that restriction for examination purposes is proper because these inventions are independent and distinct for the reasons given above and there would be a serious search and examination burden if

restriction were not required because one or more of the following reasons apply: (a) the inventions have acquired a separate status in the art in view of their different classification; (b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter; (c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries); (d) the prior art applicable to one invention would not likely be applicable to another invention; or (e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. §101 and/or 35 U.S.C. §112 first paragraph.

The Examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 C.F.R. §1.104.

Applicants' Response:

In response, applicants hereby elect Invention I, which includes claims 35-43, 52-53, 56-57, 60, 63-64, 68-70, 73, 79-

81, 84-95, 97-98, 100-102, and 108-109 drawn to a device for treating nerve tissue. This election is made without traverse.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed $245.00 fee for a two-month extension of time, is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

John P. White
Registration No. 28,678
Attorney for Applicants
Cooper & Dunham LLP
30 Rockefeller Plaza
New York, New York 10112
Tel. No. (212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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John P. White Date
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